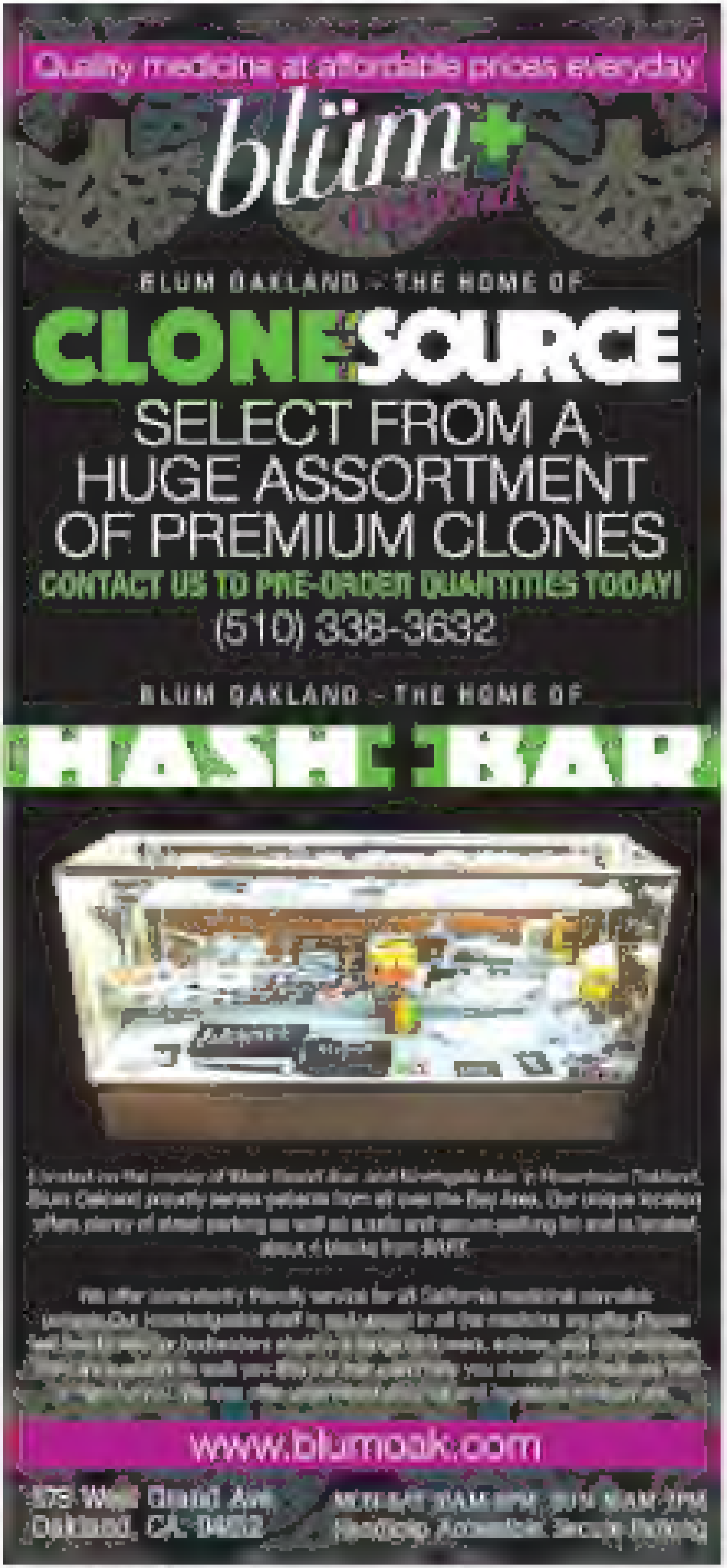
EAST BAY EXPRESS



FEELS 3

*See page 34

INSIDE: *See our feature story, "Harvesting the Wind," page 16, and our news story, "Oakland City Attorney Said Luxury Tower Deal Is Illegal," page 8.*

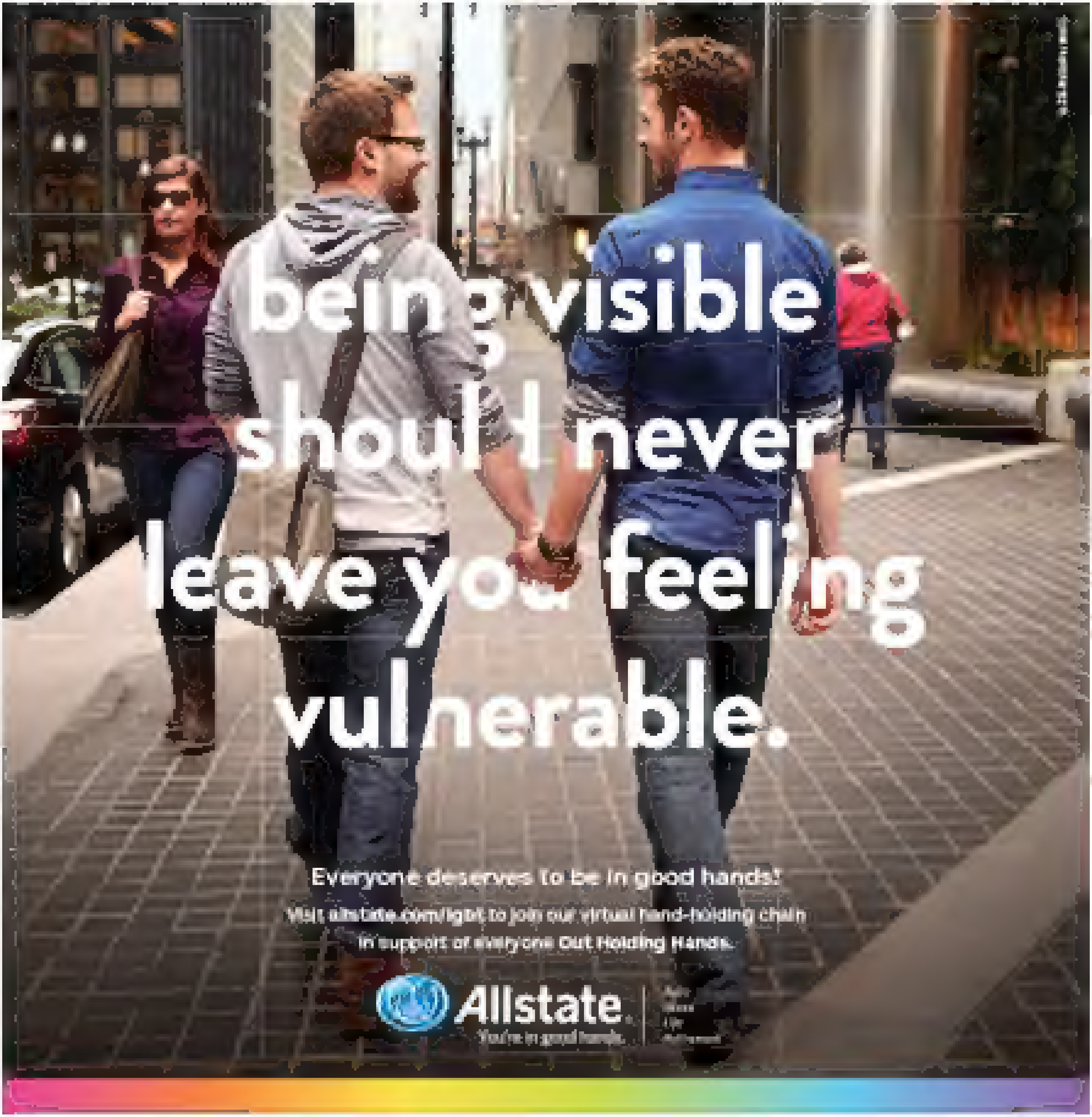


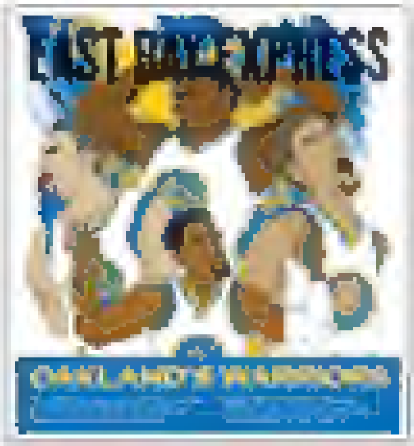
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EAST BAY EXPRESS

EDITORIAL

BUSINESS


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LETTERS

The Warriors Belong in Oakland

[illegible]

The Players Know It, Too

[illegible]

East Bay Parks Are Suffering, as Well

[illegible]

We Need a Compromise

[illegible]

Would You Rather Drive?

[illegible]

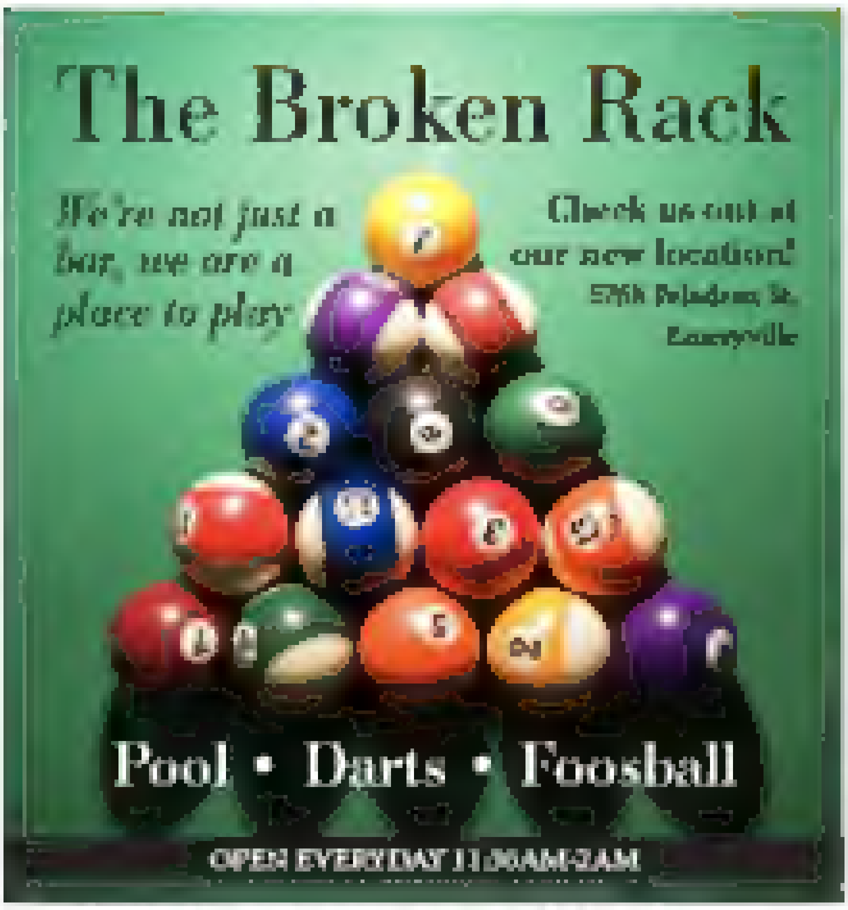
Thanks for the Well-Researched Story

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How About Community Policing?

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Removing the Mural Was Too Much

That Mural Was Art

Immigration Has Nothing to Do with Crime

Why the brouhaha over the killing of a Pleasanton woman in San Francisco by a Mexican citizen is bogus.

By Robert Gammon

[illegible]

Connecting the Dots

[illegible]







Oakland City Attorney Said Luxury Tower Deal Is Illegal

Records show that the city council ignored a confidential legal opinion drafted by City Attorney Barbara Parker that warned that the sale of public property near Lake Merritt violates state law.

By Darwin BondGraham

Oakland City Attorney Barbara Parker concluded earlier this year that the city council's plan to sell an acre of city-owned land near Lake Merritt to the developer UrbanCore for construction of a luxury housing development is illegal under state law, according to a confidential legal opinion that was written by Parker, was obtained by the *Express*, and was first reported by the *Express* on Monday on its website. But city councilmembers and city staffers have ignored the opinion of the city's official legal counsel and have pushed ahead with the controversial deal to build a 298-unit apartment tower. The second and final vote to enter into a contract to sell the public land to UrbanCore was scheduled for the July 7 council meeting.

As the *Express* first reported in April, critics of the proposed deal with UrbanCore have long contended that the process by which the city solicited bids was in violation of California's Surplus Land Act — a law that requires municipalities to prioritize affordable housing on surplus property. And Parker, in her confidential legal opinion, came to the same conclusion.

Parker wrote in her February opinion that Oakland is required to offer the land, called the 12th Street Remainder Parcel, to local government agencies that plan to build affordable housing and to affordable housing developers before soliciting bids for the construction of market-rate housing on the site. And regardless of who develops the 12th Street Remainder Parcel, if the project contains more than ten units, a minimum of 15 percent of the units on the site must be affordable to low-income households. Neither of these legal requirements have been followed by the city council and city staffers, despite the fact that the city attorney explained the law to councilmembers five months ago in a closed session meeting.

It's not clear why the council and the city's administration have chosen to ignore Parker's opinion. During the past week, the *Express* called and emailed all eight councilmembers, requesting comment, but none responded. Mayor Libby Schaaf's spokesperson Erica Derryck wrote in an email that it would be inappropriate for the mayor to comment on matters that were briefed in closed session. Citing her duty to keep attorney-client communications confidential, Parker said, "I can't provide any information about whether or not we ever provided a legal opinion." Four City Hall sources, however, confirmed the validity of the city attorney's legal opinion obtained by the *Express*.



UrbanCore's proposed luxury tower.

Critics of the luxury housing deal said that the existence of Parker's legal opinion validates the arguments they've been making for months. And they're frustrated by the fact that councilmembers ignored the opinion and went ahead with the deal. "This is what Eastlake United for Justice and our allies have been saying all along," said Monica Garcia, a member of the neighborhood coalition that wants the city to prioritize affordable housing on the 12th Street Remainder Parcel. "We would call on the city to postpone the second reading of the ordinance at the very least. There's no reason to rush ahead."

According to the city attorney's legal opinion, the City of Oakland transferred the 12th Street Remainder Parcel to the Oakland Redevelopment Agency in 2011. Redevelopment agencies were not subject to the requirements of the state Surplus Lands Act, therefore the Oakland Redevelopment Agency was not required to offer the site to affordable housing developers. This was traditionally how Oakland had side-stepped the Surplus Land Act's requirements. The Redevelopment Agency then quietly solicited bids from several developers, including UrbanCore, for construction of market-rate housing in order to maximize the sale price of the land. UrbanCore proposed a 298-unit luxury apartment tower. But according to Parker's legal memo, the dissolution of redevelopment agencies by the state in February of 2012 meant that the 12th Street Remainder Parcel was transferred back to the city, and therefore any subsequent actions to offer the land for development would have to follow the Surplus Land Act's requirements.


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= INFO TABLE
LEG ONE:
5PM - 6PM
LEG TWO:
6:30PM - 7:30PM
LEG THREE:
LEG FOUR:
9:30PM - 11:30PM
SATURDAY
JULY 11
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Nonetheless, Oakland officials chose instead to continue exclusive negotiations with UrbanCore for the luxury apartment project, and not to offer the site to public agencies and affordable housing developers. UrbanCore's original proposal did not include any affordable housing on or off-site.

Opposition to the proposed deal with UrbanCore boiled over on May 5, when protesters shut down a special meeting in order to prevent a vote that would have approved the sale of the parcel to UrbanCore for $5.1 million. Activists managed to stall a decision on UrbanCore's proposal until the council's June 17 meeting. At that meeting, the council voted 6-0-1 to green-light the sale of the land to UrbanCore, but on the condition that the developer pay an $8 million in-lieu fee for affordable housing to be developed somewhere off-site. [Councilmember Rebecca Kaplan was absent for the vote and Councilmember Desley Brooks abstained, citing the legal questions surrounding the deal.] The vote scheduled for July 7 was to be the second and final reading of the ordinance that would authorize this deal.

Throughout the process, city staffers and councilmembers have maintained that the Surplus Land Act doesn't apply to the 12th Street Remainder Parcel because the property was supposedly never put to use by the city. According to this interpretation of the law, the Surplus Land Act only applies to public property that had a former use, such as a library or parking lot. The City Administrator's Office has claimed that the 12th Street Remainder Parcel was created after 12th Street was realigned for the Lake Merritt Improvements project.

But Parker wrote that this interpretation of the law is wrong. "[T]he 12th Street remainder property clearly qualifies as 'surplus land' under the Act," Parker's memo states. "It is a former City right-of-way that is no longer necessary for the City's use as a roadway." On this point, Parker concluded that "none of the exemptions in the Act apply," and that Oakland has a legal duty to offer the property to affordable housing developers and public agencies before entering into a development agreement with UrbanCore.

Zachary Wasserman, a private attorney working for UrbanCore, has also argued that the land was never "surplus property," and that because the parcel was briefly owned by the Redevelopment Agency, it shouldn't be subject to the Surplus Land Act. In a letter to the city attorney on February 26 — the day before Parker's legal opinion was issued — Wasserman wrote that "[w]hen the RFP for the 12th Street Remainder Parcel was issued by the City, the property was owned by the Oakland Redevelopment Agency ("ORA") — which had acquired it from the City of Oakland and therefore the Surplus Land requirements [...] did not apply."

Wasserman also pointed out that the city entered into an exclusive negotiating agreement (ENA) with UrbanCore in 2013, before passage of AB 2135 last year, a state law that strengthened the Surplus Land Act's requirements by adding the provisions that 15 percent of the housing built on surplus lands be affordable, if the project includes ten or more units, and that the period of time a city is required to offer surplus land solely to affordable housing developers be extended. Wasserman concluded that "[w]hile the ENA does not obligate the city to sell the Property to UrbanCore, the City should not ignore fairness or due process in proceeding with UrbanCore as provided in the ENA."

On Wasserman's point about the city's preexisting negotiations with UrbanCore, Parker concluded that the ENA between Oakland and UrbanCore never required the city to sell the land to the developer and so the city would violate no law if it were now to offer the property to an affordable housing developer. "Accordingly, there is nothing that would legally preclude the City from complying with the Surplus Land Act now by sending out the required offer notices [to affordable housing developers]," wrote Parker. "A city cannot contract away its statutory obligations under state law."

In addition, public documents show that at least one affordable housing developer has expressed interest in bidding on the 12th Street Remainder Parcel and building affordable housing on it, but was rebuffed by city officials. "As developers of affordable housing and mixed use properties, EBALDC does have interest in developing the remainder parcel," wrote Ed Hernandez, director of Commercial Real Estate for the nonprofit East Bay Asian Local Development Corporation (EBALDC), in a January 7, 2013 email to Patrick Lane, Oakland's redevelopment program manager. Lane forwarded Hernandez' message to Gregory Hunter, the manager of Oakland's office of neighborhood investment and asked, "How should we respond to this? Are we interested in affordable housing?" Hunter told EBALDC representatives that the city wasn't pursuing affordable housing on the property, according to the emails.

Parker's legal opinion concludes with the warning that Oakland is exposing itself to a lawsuit if it sells the land to UrbanCore. "If the City does not comply with its statutory legal duty to offer the 12th Street remainder property, a potential entity [affordable housing developer] and possibly an Oakland taxpayer could block the conveyance to UrbanCore," she wrote.

On May 4, public interest attorneys representing Eastlake United for Justice wrote a letter to the city council, expressing concern that the city was in violation of the state Surplus Land Act. The attorneys, including David Zisser and Sam Tepperman-Gelfant of the nonprofit public interest law firm Public Advocates; Mike Rawson of the Public Interest Law Project; and Dan Siegel of Siegel & Yee followed up with a June 2 letter to Oakland City Attorney Parker stating their opinion that Oakland was in violation of the law. They asked the city to fully comply with the law before entering a contract or otherwise transferring the land to UrbanCore. "If the City takes any of these actions without first ensuring full legal compliance, we may ask a court to enforce unfulfilled legal obligations and enjoin the transfer of the parcel."


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Direct Displacement

A planned townhouse development in El Cerrito is displacing long-time residents from an affordable RV park — in a case that reveals the lack of protections for the East Bay's most vulnerable renters.

By Sam Levin

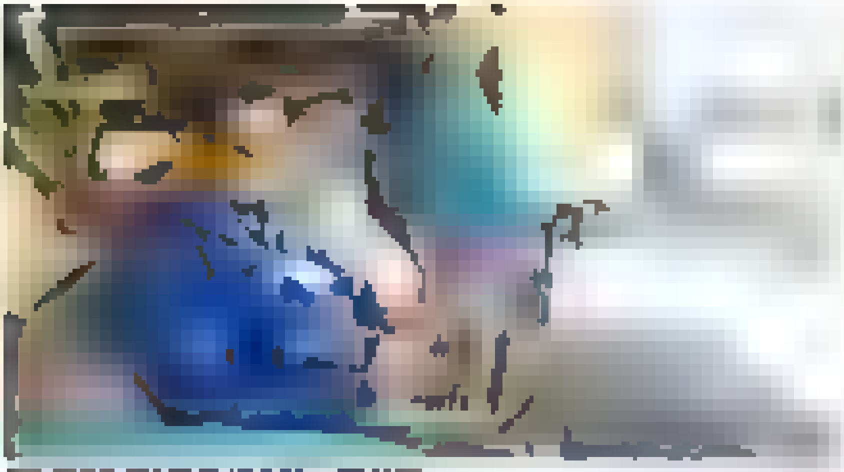
14 Weeks, 14 Bay Area Locations, 14 Photographers



WEEK 2: POINT ISABEL DOG PARK, RICHMOND SHORELINE

"It's really daunting. Everyday I look on Craigslist, but there is nothing. ... We're just people falling through the cracks in the economy, and we have nowhere to go."





Hacking the Racial Divide

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Harvesting the Wind

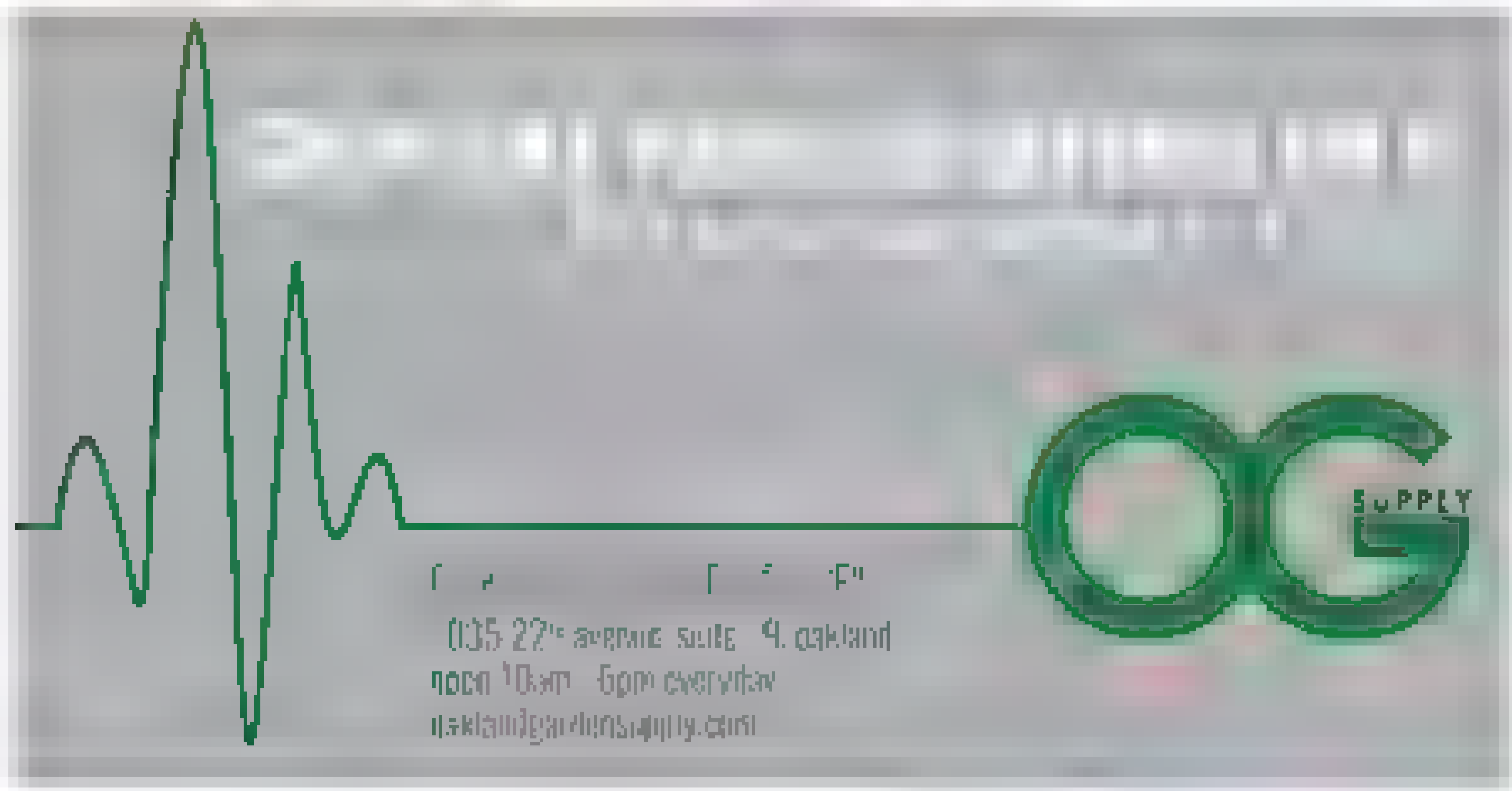
How a conservative billionaire is moving heaven and earth to become California's biggest green-energy supplier.

By Gabriel Kahn




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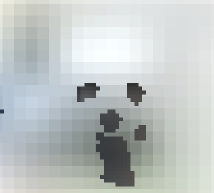
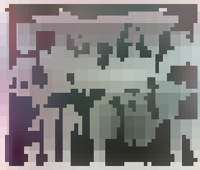

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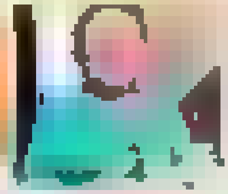
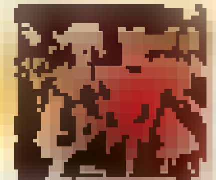




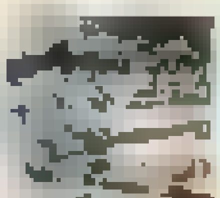

Oakland Acupuncture Project
Affordable Acupuncture $15-35 Sliding Scale

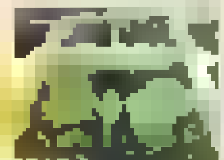

Oakland Floats

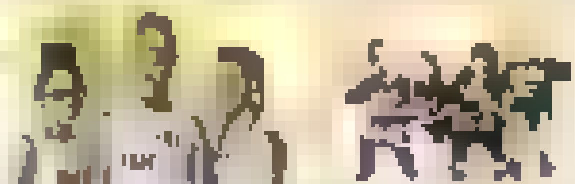






















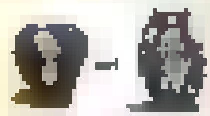






















could be forced to shut down numerous mining and drilling operations that affect the grouse's homeland. Coal mining is Wyoming's largest source of revenue and one of its biggest employers. The state's Republican governor, Matthew Mead, has said that if the sage grouse becomes officially endangered, it would "cripple the economy of our state."

And so Mead has worked to protect the state's coal industry by protecting the sage grouse. He has expanded the state's policy to restrict new development from impinging on core sage grouse habitat. And he has created sage grouse implementation teams — a whole new bureaucracy really — devoted to protecting the bird. The teams are supposed to work with federal agencies to keep the sage grouse out of harm's way. In order to get the right-of-way to erect wind turbines, Miller would have to convince both the State of Wyoming and the federal Bureau of Land Management that sage grouse wouldn't be affected.

In 2008, when Miller first looked at the map of core sage grouse habitat, he was dismayed. There was a black line drawn with a marker encircling much of the ranch. "We called it the Sharpie map," Miller recalled. It essentially cordoned off tens of thousands of acres from any development. If the black line remained as drawn, the project was dead. But Miller realized that whoever had drawn up the map knew little about the ranch or sage grouse habitat. If he could marshal the right data, he might be able to show that the ranch's sage grouse were fine, that the birds only lived in certain regions of the property.

The study they wanted, Miller said, was to create it. He hired an expert in statistical biology from the University of Missouri. He brought on a team of biologists and habitat specialists. The ranch, which usually had around six people on it, now had up to fifty "bugs and bunnies" experts, as Miller calls them, crisscrossing it daily.

The experts soon convinced Miller that strapping radio transmitters to the backs of sage grouse would allow them to chart the birds' movements. Each transmitter, at 22 grams, is the size of a [illegible] [illegible]. It is fixed [illegible] to match sage grouse feathers.

For tracking, the biologists monitored sage grouse leks, setting off across the ranch in teams of two on all-terrain vehicles (the [illegible] [illegible]). "It's basically a deer-in-the-headlights thing," said Tom Kalvesten, one of the scientists. With a spotlight, the [illegible], and [illegible] from the vehicle, [illegible] the bird, trap it in a large hoop net, and strap on the transmitter. Since 2009, the team has put tags on 300 birds. Kalvesten estimated that he's probably caught over a hundred himself.

For the past five years, the researchers have [illegible] tens of thousands of data points, essentially dots on a map that document how the sage grouse spend their time. It is the most sophisticated study of sage grouse ever conducted.

As the research dragged on, Miller began to worry that his wind farm project had turned into a protracted environmental research project. The research was also [illegible] for Miller and his team, the source of some painful news: Some of the ranch's [illegible] sage grouse liked to nest on a hillside where the ranch's [illegible] a whole lot.

[illegible] Jacobson, the company's chief wind engineer, was crushed. He had planned 327 turbines in that spot. So he set about drawing up a new plan with half as many turbines. "I'm still re-engineering," he said. The more bird data that comes in, the



[illegible]

[illegible]







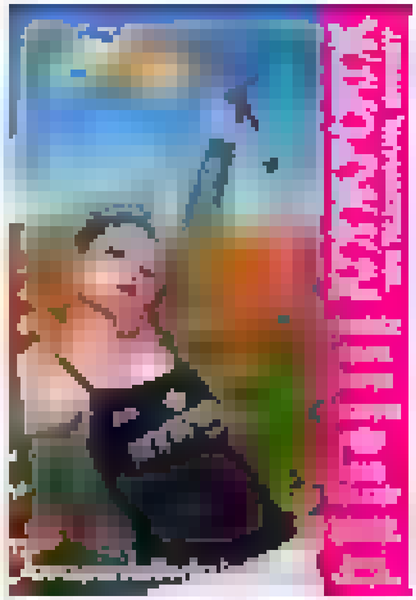

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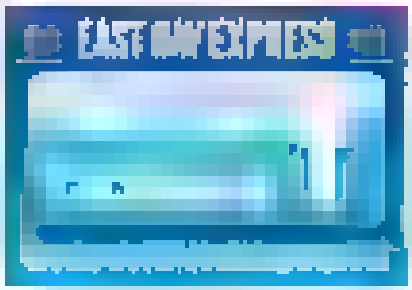


"We're doing this with good science and good planning. But don't forget, we're capitalists," Miller said. "We're doing this to make money. This is what we do for a living."















Beast Crawl is Back

In its fourth year, the East Bay literary pub crawl is more ferocious than ever

By Sarah Burke


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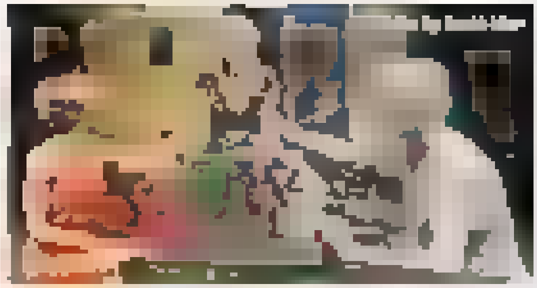





15TH STREET



Detroit







Inside Out

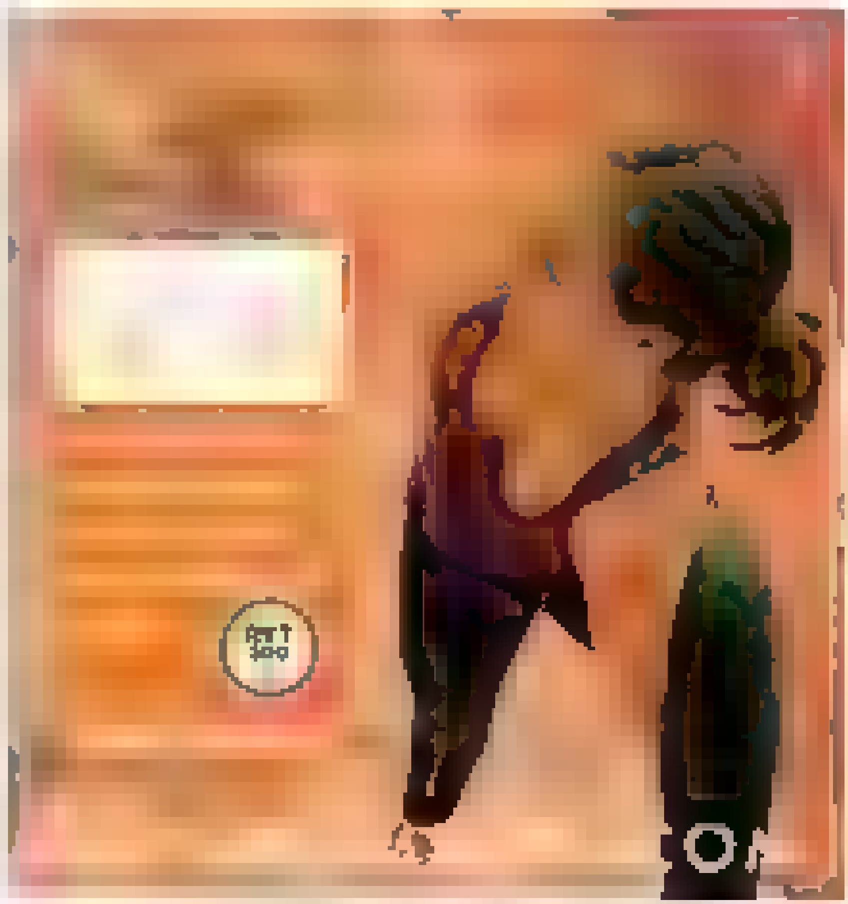
By Sam Lefebvre





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Salad Days and Shawarma Nights

Ba-Bite and Oasis Grill offer two distinct, but equally compelling, takes on Middle Eastern cuisine

By Luke Tsai

Ba-Bite

Sample Menu

Oasis Grill

Sample Menu











The Intersection of Art and Beer

How a new North Oakland brewery became a hub for local artists before it even opened. Plus, food trucks return to Snow Park.

By Luke Tsai

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Ali Baba Grill

[illegible]

Amba Falafel

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Aria Grill & Cuisine

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Hasnia

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Holy Land

[illegible]

Jerusalem Organic Kitchen

[illegible]

Kamdesh Afghan Kabab House

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Liba Falafel

[illegible]


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Supper Club: Explosive Experiments







The Singer, Not the Song



Amy

A Poem Is a Naked Person

Showtimes Online

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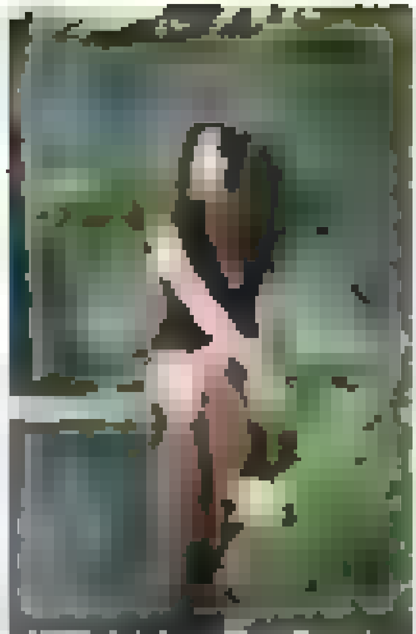




ONE-NIGHT STANDS

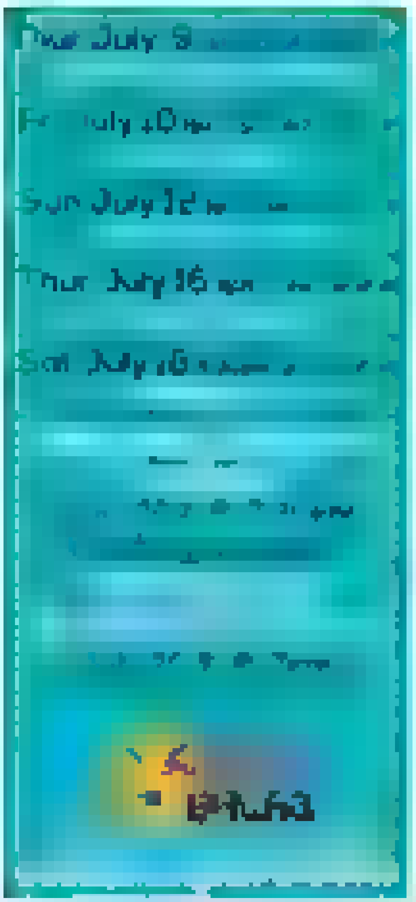
MOVIE THEATER DIRECTORY

Muse in the Machine?









Conversant Bass

By Lou Fancher




TREASURE
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PANDA BEAR



THURSDAY 9

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton

Wild Child

Shellac



FRIDAY 10

Blues, Folk, & Country

Experimental & Avant-Garde

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

SATURDAY 11

Blues, Folk, & Country

World, Latin, Reggae, & Reggaeton

Jazz, Lounge, & Cabaret

Rock & Pop

VENUE DIRECTORY EAST BAY

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton


FEELS 3
THE INTERNET


PANDEMONIUM
A TYRANNY OF DARK SOUNDS
SATURDAY JULY 11
XOXO
NIGHTCLUB


FOX
JURASSIC 5
SATURDAY, JULY 11
CHARLI XCX
BORNS
ALICE
JASON ISBELL

Rock & Pop

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

SUNDAY 12

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

World, Latin, Reggae,

& Reggaeton

Blues, Folk, & Country

Gospel & choral

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton





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NAJEE
MACY GRAY

MONDAY 13

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

World, Latin, Reggae, & Reggaeton

Blues, Folk, & Country

Rock & Pop

TUESDAY 14

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

Blues, Folk, & Country

Experimental & Avant-Garde

Rock & Pop

Soul, Funk, R&B, & Hip-Hop

WEDNESDAY 15

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

VENUE DIRECTORY SAN FRANCISCO

Soul, Funk, R&B, & Hip-Hop

World, Latin, Reggae, & Reggaeton

Blues, Folk, & Country

Jazz, Lounge, & Cabaret

Rock & Pop

THURSDAY 9

EAST BAY

FRIDAY 10

EAST BAY

SATURDAY 11

EAST BAY

SUNDAY 12

EAST BAY

MONDAY 13

EAST BAY

TUESDAY 14

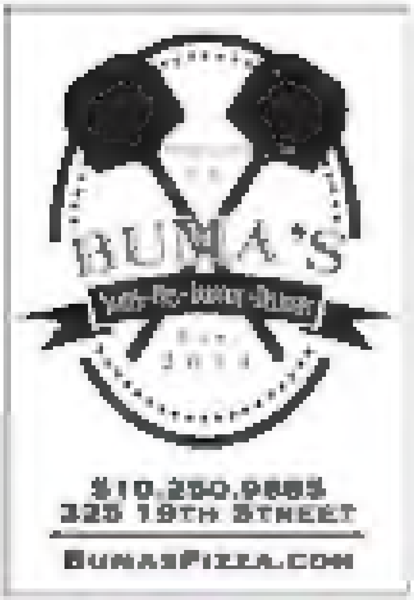
EAST BAY

PICK

Cam'ron

WEDNESDAY 15

EAST BAY





Disunion

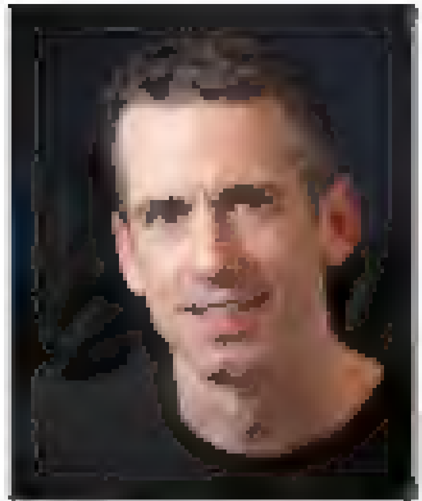
A same-sex marriage in Texas doesn't trump a civil union in Vermont.

By Dan Savage

[illegible]

Vermont played a groundbreaking role in the fight for marriage equality in the United States. [illegible]

[illegible]


Dan Savage.

[illegible]





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